

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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TRUSTEES OF THE CONSTRUCTION  
INDUSTRY AND LABORERS HEALTH AND  
WELFARE TRUST, *et al.*,

Plaintiffs,

vs.

PRO-CUT, LLC,

Defendant.

2:12-cv-00205-KJD -VCF

**ORDER**

**(Motion To Re-Open Discovery #11)**

Before the court is the plaintiffs Trustees of the Construction Industry and Laborers Health and Welfare Trust *et al*'s (hereinafter "Trust Funds") Motion To Re-Open Discovery. (#11). Defendant Pro-Cut, LLC did not file an Opposition, and plaintiffs filed a Notice of Non-Opposition (#13).

**A. Background**

On April 18, 2012, the court signed the parties' discovery plan and scheduling order, which provided for a discovery cut-off date of August 29, 2012. (#9). On July 24, 2012, the Trust Funds noticed the defendant's Rule 30(b)(6) deposition for August 16, 2012. *Id* (Exhibit 2). Upon defense counsel's request, Trust Funds rescheduled the deposition for September 14, 2012, *after* the close of discovery. *Id* (Exhibits 1 & 3). On August 20, 2012, the Trust Funds noticed the deposition to take place on September 14, 2012. *Id*. The subject of the deposition was noticed as "Pro Cut's business operations, employees, clients, principals, commonalities with B. Witt, and all other matters at issue in the above-referenced case." *Id*.

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2 The deposition was conducted on September 14, 2012, and defendant produced Mark David  
3 Haley as its person most knowledgeable. *Id* (Exhibit 4). Plaintiffs Trust Funds assert that Mr. Haley  
4 “lacked knowledge of important issues set forth in the Notices of Deposition dated July 24, 2012, and  
5 August 20, 2012.” *Id*. Mr. Haley testified during the deposition that he only joined Pro-Cut as its  
6 general manager in September of 2011, and that he has no knowledge of Pro-Cut prior to that date. *Id*.  
7 (Exhibit 4).

8 **B. Trust Funds’ Motion**

9 Trust Funds ask this court to reopen discovery to permit them to re-depose a Rule 30(b)(6)  
10 witness who possesses knowledge of the topics identified in the notices of depositions (Exhibits 2 & 3).  
11 (#11). Trust Funds assert that “good cause” and “excusable neglect” exist, and state that this is the first  
12 request for an extension of discovery. *Id*. Trust Funds argue that the defendant delayed the deposition  
13 until after discovery, and then, “in bad faith,...sent a person who lacked any knowledge that would prove  
14 or disprove any commonalities between B. Witt and Pro- Cut as expressly set forth in the Notice of  
15 Deposition.” *Id*. For this reason, Trust Funds assert, re-opening discovery is necessary. *Id*.

16 Defendant Pro-Cut did not file an opposition. Trust Funds filed a notice of non-opposition,  
17 stating that as the deadline to oppose the motion (#11) passed, defendant Pro-Cut has consented to the  
18 granting of the motion pursuant to Local Rule 7-2(d). (#13).

19 **C. Discussion**

20 As defendant Pro-Cut did not file an opposition to rebut Trust Funds’ arguments, granting Trust  
21 Funds’ motion is appropriate. *See* LR 7-2(d)(stating that “[t]he failure of an opposing party to file  
22 points and authorities in response to any motion shall constitute a consent to the granting of the  
23 motion.”). The court finds, however, that since the only discovery to complete is the defendant’s Rule  
24 30(b)(6) deposition, completely re-opening discovery is not necessary. Trust Funds are permitted to  
25 notice the defendants’ Rule 30(b)(6) deposition for a date on or before November 7, 2012. Pro-Cut

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2 must produce an individual knowledgeable on the topics identified in the notices of deposition dated  
3 July 24, 2012 (Exhibit 2), and August 20, 2012 (Exhibit 3). Failure to do so may result in sanctions.

4 Accordingly and for good cause shown,

5 IT IS ORDERED that plaintiffs Trustees of the Construction Industry and Laborers Health and  
6 Welfare Trust *et al*'s (hereinafter "Trust Funds") Motion To Re-Open Discovery (#11) is GRANTED in  
7 part and DENIED in part.

8 IT IS FURTHER ORDERED that discovery is not reopened.

9 IT IS FURTHER ORDERED that Trust Funds may notice the deposition of Pro-Cut's Rule  
10 30(b)(6) witness to be conducted on or before November 7, 2012.

11 IT IS FURTHER ORDERED that Pro-Cut must produce a Rule 30(b)(6) witness who is  
12 knowledgeable regarding "Pro Cut's business operations, employees, clients, principals, commonalities  
13 with B. Witt, and all other matters at issue in the above-referenced case." Failure to do so may result in  
14 sanctions.

15 DATED this 22nd day of October, 2012.



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17 CAM FERENBACH  
18 UNITED STATES MAGISTRATE JUDGE  
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